THE HON'BLE SRI JUSTICE K.C.BHANU

WRIT PETITION No. 14049 of 2004

Date: .10.2005

Between:

1) Dr. K.B.Chandramouli, s/o. late K.Mallaiah Gupta,
r/o. 13-6-445/A/4, Crystal Gardens, Ring Road,
Mehdipatnam, Hyderabad-28 & 9 others

…Petitioners

and

1)The Commissioner for Co-operation and Registrar of
Co-operative Societies, Andhra Pradesh, Hyderabad
& 2 others

…Respondents

ORDER:

Challenging the action of the first respondent in issuing proceedings dated 03.11.2003 appointing the second respondent as enquiry officer to conduct enquiry into the affairs of the Bhagyanagar Co-operative Urban Bank Limited, Abids, Hyderabad, under Section 51 of the A.P. Co-operative Societies Act, 1964 the present Writ Petition is filed.

The facts, in brief, that are necessary for disposal of this Writ Petition are as follows:

The petitioners were Directors of Bhagyanagar Co-operative Urban Bank Limited, Abids, Hyderabad (for short, 'the Bank'); that the Reserve Bank of India appointed Liquidator cancelling banking licence of the Bank and also ordered winding up of the Bank in accordance with the provisions of Section 64(2) (c) of the A.P. Co-operative Services Act, 1964; that pursuant to the orders of the Reserve Bank of India, the third respondent was appointed as Liquidator by first respondent issued; that consequent to the above, the petitioners ceased to be Directors/Managing Committee members of the Bank from 18.07.2000; that none of the provisions of the A.P. Co-operative Societies Act, 1964 can be applied except the provisions contained in Chapter relating to liquidation(Sections 64 to 69); that on 20.07.2004, the second respondent issued summons to the petitioners to appear before him on 16.08.2004/19.08.2004, stating that he was appointed as Enquiry Officer under Section 51 of the Act as per proceedings of the first respondent dated 03.11.2003; the enquiry being conducted by the second respondent on the directions of the first respondent is without jurisdiction and contrary to law; since the bank is at liquidation stage, there is no legal validity to proceed with enquiry under Section 51 of the Act; hence, the Writ Petition.

The respondents filed counter affidavit denying the allegations in the petition and contending that the inspection report dated 05.03.1998 submitted by the Reserve Bank of India pointed out grave irregularities in sanction of loans, mismanagement of funds, etc. in the bank and so, vide letter dt. 30.04.1998, it precluded the bank from incurring any liability or granting or renewing loans, etc.; that on the report of the District Co-operative Officer, Hyderabad regarding irregularities in the bank, an enquiry was ordered and the enquiry officer in his report pointed out serious defects in the functioning of the Bank; the Reserve Bank of India vide its letter dated 18.07.2004

ordered for winding up of the bank; the Bank filed an appeal before the Government of India against orders of cancellation of the licence issued by the Reserve Bank of India, which was dismissed ; on 28.09.2000, the first respondent appointed a liquidator for winding up of affairs of the bank; that there is no illegality in the impugned action of the respondents; hence, the Writ Petition is liable to be dismissed.

The learned counsel for the petitioners contended that Section 51 of the Co-operative Societies Act, 1964 (for short, 'the Act') applies only when the Bank is in existence; that when the bank was ordered to wind up in the year 2000 appointing a Liquidator, question of enquiry against the petitioners is not permissible under law; in view of the proceedings under Chapter 9 of the Act, Section 51 of the Act does not come into play. The learned counsel also contended that once winding up of the bank is taken up, the Registrar has no power to enquire into under Section 51 of the Act; that the exercise of power by the administrative authorities must be within a reasonable time; that after lapse of nearly five years, the present action has been initiated; therefore, he prays to allow the Writ Petition.

The learned Government Pleader for Co-operation appearing for the respondents contended that it is only a notice calling for explanation and the certificate of registration of the Bank has not been cancelled under Section 68 of the Act; that the Bank was in the process of winding up till cancellation of registration and so, Section 51 will apply; hence, he prays to dismiss the Writ Petition.

The Reserve Bank of India conducted inspection under Section 35 of the Banking Regulation Act, 1949 on the financial position of Bank and the inspection report dated 05.03.1998 pointed out several irregularities in sanction of loans, mismanagement of the bank funds and other procedural irregularities. The first respondent admittedly appointed a Liquidator for winding up of affairs of the bank on 28.09.2000.

The learned counsel for the petitioners stated that under Section 64

of the Act, the Registrar, on an enquiry held under Section 51 or inspection made under Section 52, is competent to wind up a society, and therefore, he has no *locus standi* to cause enquiry under Section 51 of the Act again. The Registrar alone has got statutory power to direct winding up of a society under certain circumstances, on fulfillment of certain conditions. Sections 55 and 56 of the Act deal with appointment of a Liquidator and powers of the Liquidator. A perusal of Section 51 of the Act goes to show that under 3 circumstances, the Registrar can make enquiry. They are constitution, working and financial condition.

The learned counsel for the petitioners placed strong reliance on a decision in *Commissioner of Labour v. Andhra National Textiles Workers Union* wherein it is held as follows: (para 6)

> "The language of the statute, therefore, as appears, is clear and categorical to the effect that it is on the Registrar only that the statute empowers the power to direct winding-up upon fulfillment, however, of certain conditions It is a statutory provision and the Registrar being the creature of the statute shall have to assess the situation in terms of the provisions of the statute and the Court is not otherwise empowered to order winding up or two appoint a Liquidator. No amount of consent can be conferred onto the Court to act *de hors* the statute. In the event the statute prescribes a specific mode, that particular mode alone needs to be adhered to as prescribed by the statute and not otherwise. Be it also noted that Sections 65 and 66 of the Act deal with the provisions for appointment of the Liquidators and the powers of the Liquidators. Again these are the statutory provisions which ought to be carried out to their fullest extent in order to achieve the intendment of the law maker and the Law Court must always act in terms thereof and not *de hors* the same."

The learned counsel relied on another decision in *B.Suryanarayana & others v. The Kollur Parvathi Co-op. Bank Limited & others ,* wherein it is held as follows: (para 10)

> "… A special procedure has been evolved under the Co-operative Societies Act for the winding up of the societies. The Co-operative Societies Act provides a special procedure for registration of

> societies and also the management of the affairs of the society and winding up of the societies. This is a self-contained Act which deals exclusively with the Co-operative Banks registered under this Act…"

These two decisions have no application to the facts of the present case in view of the fact that the above decision deal with power of the Registrar in winding up of the society under certain circumstances. The society came into existence legally as per Section 4(2) of the Act upon registration. Once the order to be wound up of the society has been passed, it only suspends operation of the banking business. The legal entity of the society remains in existence till the registration of the society is cancelled as per Section 68 of the Act, which reads as under:

> "Where the affairs of a society have been completely wound up, after considering the report of the liquidator under sub-section (4) of Section 66, the Registrar shall, by order in writing, cancel the registration of the society. The society shall cease to exist as a corporate body from the date of such order."

Admittedly, in this case, registration has not been cancelled and so, there is possibility for the Liquidator to revive the society. The petitioners herein are the Directors of the Bank. The allegation against them is that they have sanctioned unsecured loans amounting Rs. 8.25 crores without proper sureties and security. All the actions of the Directors would not be absolved in view of the fact that the Bank was ordered to wind up because of liquidation. Under Section 51 of the Society, the Registrar can make enquiry into the constitution, working and financial condition of the society. The powers of the Liquidator are enumerated under Sections 66 (1) of the Act, which are as follows:

"Subject to the control of the Registrar, the liquidator shall have the power –

a. to institute and defend suits and other legal proceedings on behalf

of the society by the name of his office;

b. to realize the assets of the society, by sale or otherwise;

c. to determine, from time to time, the contribution to be made or remaining to be made and the debts due by the members or past members or by the estates or nominees, heirs or legal representatives of deceased members or by any officers or former officers to the society;

d. to investigate all claims against the society, and subject to the provisions of this Act, to decide questions of priority arising between claimants;

e. to pay claims against the society including interest up to the date of winding according to their respective priorities, if any, in full or rateably, as the assets of the society may permit, the surplus, if any, remaining after payment of the claims, being applied in payment of interest from the date of such order of winding up at a rate fixed by him but not exceeding the contract rate in any case;

f. to determine by what persons and in what proportions the costs of liquidation are to be borne;

g. to determine whether any person is a member, past member or nominee of deceased member;

h. to give such directions in regard to the collection and distribution of the assets of the society as may appear to him to be necessary for winding up the affairs of the society;

i. to carry on the business of the society so far as may be necessary for its beneficial winding up;

j. with the previous approval of the prescribed authority, to make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging to have any claim present or future, whereby the society may be rendered liable; and

k. with the previous approval of the prescribed authority, to compromise all calls or liabilities to any calls and debts and liabilities capable of resulting in debts and all claims present or future, certain or contingent subsisting or alleged to subsist between the society and a contributory or alleged contributory or other debtor or person apprehending liability to the society and

all questions in any way relating to or affecting the assets or the winding up of the society on such terms as may be agreed and take any security for the discharge of any such call, liability, debt or claim and give a complete discharge in respect thereof;

l. to raise on the security of the assets of the society any money required with the permission of the Government."

Since the allegations levelled against the petitioners is with regard to financial aspects and the Bank's registration is not yet cancelled, Section 51 of the Act will continue to apply to the management of the Bank. Even after winding up of Society, the Registrar will have a control over the society under Section 66(1) of the Act. Therefore, the contention of the learned counsel for petitioner that once the winding up order is passed, the Registrar has no power to conduct enquiry under Section 51 of the Act is wholly devoid of merit and is not acceptable.

The other contention of the learned counsel for the petitioners is that the impugned action of the respondents is arbitrary in view of the fact that the enquiry was not ordered under Section 51 of the Act within reasonable time and therefore, exercise of power by the respondents after lapse of 7 years is arbitrary and illegal. No doubt, there are some lapses on the part of the respondents in initiating enquiry when the Reserve Bank of India in its inspection report dated 05.03.1998 pointed out grave irregularities. The allegation is that the managing committee of the bank sanctioned several unsecured loans to a tune of Rs. 8.25 crores without proper security and sureties. To fix the responsibility, an enquiry under Section 51 of the Act is necessary. The Liquidator also submitted a report stating that there is substantial misappropriation of funds in the bank and the loans sanctioned by the managing committee were unsecured; that there were some benami loans and there is no scope to recover the loans. If the loans are not recovered from the loanees, the Liquidator can not discharge his functions effectively. Even if there is some delay in ordering the

enquiry under Section 51 of the Act, that will not give a cause of action for the petitioners to challenge the impugned proceedings. Since it is a case involving huge financial irregularities and also affects interests of so many investors, who have invested their hard earned money in the Bank, the delay, if any, in initiating the enquiry can not be a ground to quash the same.

The Writ Petition is devoid of merits and is, accordingly, dismissed. No costs.

(K.C.Bhanu,J.)

.10.2005

DRK